

AMENDED IN SENATE JULY 6, 1999
AMENDED IN ASSEMBLY MAY 10, 1999
AMENDED IN ASSEMBLY APRIL 14, 1999

CALIFORNIA LEGISLATURE—1999–2000 REGULAR SESSION

ASSEMBLY BILL

No. 1332

Introduced by Assembly Member Lowenthal

February 26, 1999

An act to add Section 25142.5 to the Health and Safety Code, relating to hazardous waste.

LEGISLATIVE COUNSEL'S DIGEST

AB 1332, as amended, Lowenthal. Nonhazardous waste: determination.

(1) Existing law requires the Department of Toxic Substances Control to adopt, by regulation, criteria and guidelines for the identification of hazardous waste and requires any waste that conforms to a criteria adopted by the department to be managed in accordance with the hazardous waste control laws. A violation of the hazardous waste control laws is a crime.

This bill would prohibit a ~~generator of hazardous person~~ *who generates specified types of waste* from determining that ~~a~~ *the* waste is nonhazardous, based on the ~~generator's person's~~ knowledge of the hazardous characteristics of the waste and the materials or process used by the ~~generator person~~, unless the ~~generator person~~ either maintains specified documents or meets specified conditions under federal regulations to be

classified as a conditionally exempt small quantity generator. The bill would require the department to implement a comprehensive training, education, and enforcement program to increase awareness of the requirements governing the determination on whether a waste is hazardous and to enforce those requirements, as specified.

Since a violation of the bill's requirements would be a crime, the bill would impose a state-mandated local program by creating a new crime.

(2) The California Constitution requires the state to reimburse local agencies and school districts for certain costs mandated by the state. Statutory provisions establish procedures for making that reimbursement.

This bill would provide that no reimbursement is required by this act for a specified reason.

Vote: majority. Appropriation: no. Fiscal committee: yes. State-mandated local program: yes.

The people of the State of California do enact as follows:

1 SECTION 1. Section 25142.5 is added to the Health
2 and Safety Code, to read:

3 25142.5. (a) A person who generates a waste shall
4 determine if that waste is a hazardous waste using the
5 methods prescribed by the regulations adopted by the
6 department. Notwithstanding any provision of those
7 ~~regulations, a generator of hazardous waste shall not~~
8 ~~determine that a waste is nonhazardous based on the~~
9 ~~generator's knowledge of the hazardous characteristics of~~
10 ~~the waste and the materials or process used by the~~
11 ~~generator, unless one of the following applies:~~
12 *regulations, except as provided in subdivision (b), a*
13 *person who generates any of the following wastes shall*
14 *not determine that the waste is nonhazardous based on*
15 *the person's knowledge of the hazardous characteristics*
16 *of the waste and the materials or process used by that*
17 *person:*

18 (1) *The waste is listed in subdivision (b) of Appendix*
19 *X to Section 66261.126 of the California Code of*
20 *Regulations.*

(2) *The waste is reasonably expected to include a constituent listed in subdivision (a) of Appendix X to Section 66261.126 of the California Code of Regulations, in a concentration that would cause it to be considered hazardous waste pursuant to any of the criteria set forth in Chapter 11 (commencing with Section 66261.1) of Division 4.5 of Title 22 of the California Code of Regulations.*

(b) *A person generating a waste specified in paragraph (1) or (2) of subdivision (a) may make the determination specified in subdivision (a) that the waste is nonhazardous, if one of the following applies:*

(1) *The ~~generator~~ person complies with the requirements of subdivision ~~(b)~~ (c).*

(2) (A) *The ~~generator~~ person is a conditionally exempt small quantity generator who meets the requirements of subdivisions (a) and (g) of Section 261.5 of Title 40 of the Code of Federal Regulations.*

(B) *Subparagraph (A) does not exempt a conditionally exempt small quantity generator from any other provision of this chapter.*

~~(b) A generator who determines that a waste is~~

(c) *A person who generates a waste described in paragraph (1) or (2) of subdivision (a) and who determines that the waste is nonhazardous based on an application of the ~~generator's~~ person's knowledge of the hazardous characteristic of the waste and the materials or process used by the ~~generator~~ person shall maintain documentation that demonstrates that the waste is a nonhazardous waste within the confidence level prescribed by the United States Environmental Agency's guidelines document SW-846, or by a comparable methodology. The generator shall pursuant to the federal act or pursuant to any of the criteria set forth in Chapter 11 (commencing with Section 66261.1) of Division 4.5 of Title 22 of the California Code of Regulations. The person shall maintain the documentation for three years following the date that determination is made. The documentation shall include either of the following: date the waste was last sent to an onsite or offsite treatment,*

1 *storage, or disposal facility. This determination shall be*
2 *based on either, or both, of the following:*

3 (1) The results of ~~previous analytic testing~~ *analytic*
4 *testing, in compliance with the applicable methods set*
5 *forth in Chapter 11 (commencing with Section 66261.1)*
6 *of Division 4.5 of Title 22 of the California Code of*
7 *Regulations, of samples of the same, or substantially*
8 *similar, waste generated by the generator person making*
9 *the determination.*

10 ~~(2) Data regarding the concentrations~~

11 (2) *Information regarding the constituents,*
12 *concentrations, and the chemical reactions in the same or*
13 *substantially similar production process or activity that*
14 *generated the waste stream.*

15 ~~(c)~~

16 (d) The department shall, to the extent existing
17 resources are available, implement a comprehensive
18 training, education, and enforcement program for
19 generators, transporters, and facility operators, for
20 personnel conducting inspections for the departments,
21 and for certified unified program agencies. The program
22 shall be designed to increase awareness of the
23 requirements governing the determination of whether a
24 waste is hazardous, and to enhance the level of
25 enforcement of those requirements. In implementing
26 this program, the department shall give priority to
27 training, education, and enforcement activities relating
28 to the classification of oily water and contaminated soil.

29 ~~(d)~~

30 (e) Nothing in this section affects any exemption or
31 exclusion from regulation or classification as a hazardous
32 waste.

33 (f) *Nothing in this section affects the criteria for*
34 *determining whether or not a waste is hazardous, or*
35 *affects the scope of the department's jurisdiction,*
36 *including, but not limited to, the scope of the*
37 *department's jurisdiction over oil production facilities.*

38 (g) *Nothing in this section affects the obligation of any*
39 *person to comply with Section 66262.40 of Title 22 of the*
40 *California Code of Regulations, or affects the*

1 *presumptions set forth in Appendix X of Section 66261.126*
2 *of Title 22 of the California Code of Regulations.*

3 SEC. 2. No reimbursement is required by this act
4 pursuant to Section 6 of Article XIII B of the California
5 Constitution because the only costs that may be incurred
6 by a local agency or school district will be incurred
7 because this act creates a new crime or infraction,
8 eliminates a crime or infraction, or changes the penalty
9 for a crime or infraction, within the meaning of Section
10 17556 of the Government Code, or changes the definition
11 of a crime within the meaning of Section 6 of Article
12 XIII B of the California Constitution.

